



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120416016-2151-01]

RIN 0648-BB96

Atlantic Highly Migratory Species; Silky Shark Management Measures

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This rule would implement the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendation 11-08, which prohibits retaining, transshipping, or landing of silky sharks (Carcharhinus falciformis) caught in association with ICCAT fisheries. In order to improve domestic enforcement capabilities, the National Marine Fisheries Service is also proposing to prohibit the storing, selling and purchasing of the species. This rule would affect the commercial HMS pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This rule would not affect commercial fishermen fishing for sharks with bottom longline, gillnet, or handgear; nor would the rule affect recreational fishermen as harvesting silky sharks is already prohibited in the recreational fishery. This action implements the ICCAT recommendation, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by 5:00 p.m., local time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0116, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0116 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Sarah de Flesco or Karyl Brewster-Geisz at National Marine Fisheries Service, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: 301-713-1917; *Attn:* Sarah de Flesco.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah de Flesco or Karyl Brewster-Geisz by phone: 301-427-8503 or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 et seq. The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act and ATCA, 16 U.S.C. 971 et seq. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT website at <http://www.iccat.int/en/>. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA. The implementing regulations for Atlantic highly migratory species (HMS) are at 50 CFR part 635.

At the 22nd Regular Meeting of ICCAT in 2011, ICCAT adopted Recommendation 11-08, which requires the United States to initiate rulemaking in order to fulfill obligations as a Contracting Party to the Convention. The “Recommendation on the Conservation of Silky Sharks Caught in Association with ICCAT Fisheries (11-08),” requires fishing vessels operating in ICCAT fisheries to release all silky sharks whether dead or alive, and prohibits retaining on board, transshipping, or landing any part or whole carcass of a silky shark (Carcharhinus falciformis). The recommendation cites the fact that silky sharks were ranked as the species with the highest degree of vulnerability in the 2010 ecological risk assessment for Atlantic sharks.

In this proposed rule, NMFS considers changes to the Atlantic HMS regulations at 50 CFR part 635, consistent with the ICCAT recommendation and the Magnuson-Stevens Act. Such changes would affect only commercial vessels with pelagic longline gear onboard that fish

for tunas and tuna-like species. Harvesting silky sharks is already prohibited in the recreational fishery. While silky sharks could be caught on handgear, bottom longline, or gillnet gear commercially, these gears target sharks directly and are not used in association with ICCAT fisheries; therefore, we are not considering action to prohibit the retention of silky sharks from these gears.

We prepared a draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of each alternative contained in this proposed rule. The complete list of alternatives and related analyses are provided in the draft EA/RIR/IRFA, and are not repeated here in their entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see ADDRESSES).

In this action, we propose to prohibit the retention of silky sharks on Atlantic HMS commercially-permitted vessels that have pelagic longline gear on board. Additionally, we propose to prohibit the storing, selling, or purchasing of silky sharks to ensure domestic enforcement ability.

Silky sharks were last assessed as part of the Large Coastal Shark complex, which was assessed during the Southeast Data, Assessment, and Review (SEDAR) 11 process. Silky sharks are part of the complex, and the stock status of silky sharks is unknown.

Silky sharks were included in the 2010 ecological risk assessment conducted for the ICCAT Standing Committee on Research and Statistics. In the risk assessment, silky sharks were ranked as the Atlantic shark species with the highest degree of vulnerability to fishing. Given the low productivity and high susceptibility of silky sharks to pelagic longline fisheries as noted in the ecological risk assessment, the implementation of the ICCAT silky shark

recommendation could benefit the status of this stock by reducing mortality in the Atlantic Ocean.

We considered three alternatives for the proposed action. Alternative 1 would maintain the status quo and would not implement ICCAT Recommendation 11-08. Alternative 2 would prohibit retaining, transshipping, and landing silky sharks. The proposed action is alternative 3, which would prohibit retaining, transshipping, and landing as well as prohibiting the storing, selling, and purchasing of silky sharks.

An analysis of the 2006 through 2010 HMS logbook data, which covers the HMS pelagic longline fishery, indicates that under status quo (alternative 1) on average a total of 60 silky sharks are kept per year and a total of 1,417 are discarded dead (742) or alive (676) each year in U.S. fisheries. Thus, from these figures, only about 4 percent of all silky sharks caught by pelagic longline vessels are retained.

Under both alternative 2 and alternative 3 (the proposed alternative), all live and dead silky sharks would have to be released by pelagic longline fishermen. According to the pelagic longline observer program and HMS logbook data, on average each year, 60 silky sharks were retained, of which 17 were caught alive and 43 caught dead. Therefore, under these two alternatives, of the 60 silky sharks kept per year, 17 would be released alive. Although silky sharks are not caught in large numbers in the pelagic longline fishery (i.e., less than 12 percent of pelagic longline trips between 2006-2010 caught silky sharks), these alternatives would have minor, beneficial ecological impacts for silky sharks because mortality would be reduced somewhat in the pelagic longline fishery.

Under both alternative 2 and alternative 3 (the proposed action), approximately 785 would be discarded dead (43 sharks discarded from those that would be retained under the status quo

plus 742 that would be discarded dead under the status quo). The actual number of silky sharks expected to be caught (1,477 per year on average) in the pelagic longline fishery is not expected to change as a result of this action. Because few silky sharks are currently retained in proportion to the total number of silky sharks caught, the prohibition against retention would have minor beneficial ecological impacts although it may provide some additional incentive to avoid the species. Any reduction of mortality for silky sharks could be expected to also have beneficial impacts due to low productivity and high susceptibility of silky sharks to pelagic longline fisheries as noted in the 2010 ICCAT ecological risk assessment.

Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. The current HMS pelagic longline fleet consists of 242 vessels as of October 2011. However, according to HMS logbook data, on average, seven pelagic longline vessels combined landed 60 silky sharks weighing 2,671 lb per year from 2006 through 2009. Using the median, ex-vessel price per pound of \$0.75 for silky shark meat and \$11.11 for shark fins, this is equivalent to \$3,392 (\$1,489 for fins and \$1,903 for meat) in average annual gross revenues from landings of silky sharks from pelagic longline vessels or \$485 per vessel that landed silky sharks. Because the proposed action would prohibit the retention of silky sharks from pelagic longline vessels, it would likely result in minor, adverse socioeconomic impacts to commercial pelagic longline fishermen because, even though there are small amounts of silky sharks landed, fishermen would no longer be able to land this species and could potentially lose annual revenues of \$3,392 for all vessels or \$485 per vessel. However, it is unlikely that commercial fishermen would alter fishing practices for tuna and tuna-like species, because silky shark landings constitute such a small portion of pelagic longline catch, landings, and revenues.

Under alternative 3 (the proposed action), the pelagic longline fishery would be prohibited against the storing, selling, and purchasing of silky sharks in addition to prohibiting the retaining, transshipping, and landing of silky sharks. The proposed action would provide consistency with current regulations for oceanic whitetip and hammerhead (except for *Sphyrna tiburo*) sharks in the commercial pelagic longline fishery for tuna and tuna-like species and would simplify compliance, for fishermen and for dealers, as well as enforcement. The measureable ecological impacts of the proposed action (alternative 3) remain the same as alternative 2. However, the proposed action might have additional ecological benefits by reducing mortality of silky sharks. Additionally, under the proposed action, Atlantic HMS commercial permit holders with pelagic longline gear on board would no longer be authorized to retain silky sharks and could experience minor, adverse socioeconomic impacts. The measureable economic and social impacts of the proposed action are similar to those of alternative 2. However, under the proposed action, a pelagic longline vessel operator would not be allowed to store or sell silky shark products and a dealer could not buy silky sharks from a pelagic longline vessel owner or operator. Adding additional prohibitions beyond those called for under alternative 2 would also be consistent with the approach we have taken for oceanic whitetip sharks and scalloped, smooth and great hammerhead sharks in the commercial pelagic longline fishery for tuna and tuna-like species. We feel that adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would make them easier to remember by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, and thus, would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the

prohibition against the sale and purchase should help to eliminate the market for silky sharks and encourage compliance with the prohibition on retention. Although there would be some minor adverse socioeconomic impacts under the proposed action due to a slight loss of revenue by pelagic longline vessel operators similar to that of alternative 2, the proposed action would provide minor beneficial socioeconomic impacts by providing a rule that is consistent with the current regulations and easier with which to comply and enforce.

In conclusion, the proposed action of prohibiting the retention of silky sharks in the pelagic longline fishery for tuna and tuna-like species is likely to have minor beneficial ecological impacts because of the potential reduction in mortality, and minor adverse socioeconomic impacts because this species constitutes a low percentage of the total pelagic longline landings.

Public Hearing

Comments on this proposed rule, Draft Environmental Assessment, and Finding of No Significant Impact may be submitted via <http://www.regulations.gov>, mail, or fax, and comments may also be submitted at a public hearing (see DATES and ADDRESSES). NMFS solicits comments on this proposed rule by [insert date 30 days after date of publication in the FEDERAL REGISTER]. NMFS will hold a public hearing via conference call for this proposed rule. The hearing location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah de Flesco at 301-427-8503, at least 7 days prior to the meeting.

Location	Date	Time	Address
Conference call	July 9, 2012	1:00 – 3:00 p.m.	Conference line: 800-857-3903 Passcode: 6059057

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NMFS prepared an environmental assessment that discusses the impact on the environment as a result of this rule. In this proposed action, NMFS is considering prohibitions against retaining, transshipping, landing, storing, selling, or purchasing of silky sharks in the Atlantic pelagic longline fishery for tuna and tuna-like species. A copy of the environmental assessment is available from NMFS (see ADDRESSES).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted,

would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments to implement recommendations of ICCAT pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 consistent with an ICCAT recommendation. NMFS proposes to implement the 2011 ICCAT silky shark recommendation in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be ICCAT-managed fisheries. The regulatory changes would affect HMS vessels that catch sharks in association with tuna and tuna-like species on commercial vessels that deploy pelagic longline gear. This proposed action is necessary to implement an ICCAT recommendation pursuant to ATCA. In compliance with the ATCA, NMFS is required to implement domestic regulations consistent with recommendations adopted by ICCAT as necessary and appropriate.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. In accordance with the Small Business Administration (SBA) size standards, NMFS used the following thresholds to determine if an entity regulated under this action would be considered a small entity: average annual receipts less than \$4.0

million for fish-harvesting, average annual receipts less than \$6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. Using these thresholds, NMFS determined that all HMS permit holders are small entities. Specifically, this proposed action would apply to all participants in the Atlantic HMS pelagic longline commercial fishery that targets tuna and tuna-like species. As of October 2011, 242 vessels held a commercial Tuna Longline permit and can be reasonably assumed to use pelagic longline gear. All of the vessels holding these permits could be affected by this action.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. § 603 (b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. § 603(b)(5)). Fishermen, dealers, and other participants in this fishery must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. NMFS does not believe that the proposed regulations would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c), agencies are required to describe any alternatives to the proposed rule that accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in the draft Environmental Assessment for the proposed action. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 § (c) (1)-(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing

compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS prepared this IRFA to analyze the impacts on small entities of the alternatives for implementing the ICCAT Recommendation 11-08 for pelagic longline vessels that target tuna and tuna-like species, all of which are considered small entities. NMFS considered and analyzed three alternatives including Alternative 1 (no action); Alternative 2 (implementing ICCAT Recommendation 11-08 in the commercial pelagic longline fishery for tuna and tuna-like species); and Alternative 3 (implementing ICCAT Recommendation 11-08 and additional prohibitions against storing, selling and purchasing of silky sharks in the commercial pelagic longline fishery for tuna and tuna-like species).

Under the No Action Alternative, Alternative 1, there would be no additional economic impacts to HMS pelagic longline vessels fishing for tuna and tuna-like species. Commercial

pelagic longline vessels that fish for tuna and tuna-like species that are also currently authorized to land silky sharks would be able to continue that practice. Commercial pelagic longline fishermen would continue to be able to land silky sharks and could potentially earn \$485 per vessel. Additionally, each vessel is predicted to earn a total of \$190,986 per year in revenue from swordfish and tuna (\$96,525 from swordfish and \$94,461 from tuna). Therefore, revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue.

Under Alternative 2, pelagic longline vessel operators and owners could not retain, transship, or land silky sharks, consistent with ICCAT Recommendation 11-08. Thus, on average, each vessel would lose approximately \$485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas (\$190,986 total revenues).

Under Alternative 3, pelagic longline vessel owners and operators could not retain, transship, land, sell, or store silky sharks, consistent with ICCAT Recommendation 11-08 and other domestic regulations. This alternative is essentially the same as alternative 2 but would improve domestic enforcement capabilities. Thus, on average, each vessel would lose approximately \$485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas (\$190,986 total revenues). We prefer Alternative 3 at this time, because it would implement ICCAT Recommendation 11-08, would likely have minor ecological benefits, would have minor socioeconomic impacts on the pelagic longline fishery, and would provide enhanced enforcement abilities. Additionally, we believe this alternative would be unlikely to change fishing practices or effort.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 19, 2012.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.21, paragraph (c)(1)(ii) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(c) * * *

(1) * * *

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

* * * * *

3. In § 635.24, paragraph (a)(9) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, oceanic whitetip sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board.

* * * * *

4. In § 635.31, paragraph (c)(6) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

* * * * *

(c) * * *

(6) A dealer issued a permit under this part may not purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board. A dealer issued a permit under this part may not purchase oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from the owner of a fishing vessel issued both a HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

* * * * *

5. In § 635.71, paragraph (d)(19) is revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(19) Retain, possess, transship, land, store, sell or purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks as specified in § 635.21 (c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

* * * * *

[FR Doc. 2012-15348 Filed 06/21/2012 at 8:45 am; Publication Date: 06/22/2012]